

**R. L. Reisinger Co., Inc. and International Brotherhood of Electrical Workers, Local Union No. 683, AFL-CIO. Case 9-CA-29721**

September 30, 1993

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

The central issue in this case is whether the Respondent is the alter ego of Ronald L. Reisinger d/b/a R. L. Reisinger Company (Reisinger Co.) and violated Section 8(a)(5) by refusing to adhere to the collective-bargaining agreement between Reisinger Co. and the Union.

Administrative Law Judge Richard H. Beddow, Jr. found that the Respondent violated the National Labor Relations Act as alleged.<sup>1</sup> The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>2</sup> and conclusions, to amend the remedy, and to adopt the recommended Order.

**AMENDED REMEDY**

The Charging Party excepts to the judge's recommended remedy insofar as it does not expressly re-

<sup>1</sup> On May 21, 1993, the judge issued the attached decision. The Respondent filed exceptions and a supporting brief. The Charging Party filed a cross-exception and supporting brief. The Respondent filed a brief in opposition to the Charging Party's cross-exception.

<sup>2</sup> The Respondent excepts to the judge's finding that Union Business Agent Brotherton was unaware that Rob VanMeter was employed by the Respondent on a project in Gahanna, Ohio. We find no merit in this exception. The Respondent cites Ronald Reisinger's testimony that after speaking with Reisinger, Brotherton "proceeded to go into the job and look around, from, well, what I was told and talked to my electrician—my man on the job." However, Reisinger did not identify the source of this hearsay statement about Brotherton's visit to the jobsite. Nor was any other evidence adduced concerning the alleged encounter between Brotherton and VanMeter. We, therefore, conclude that the record supports the judge's finding that Brotherton was unaware of VanMeter's presence on the Gahanna, Ohio jobsite.

The Respondent also excepts to the judge's finding that R. L. Reisinger Co., Inc., paid the debts of the sole proprietorship, Ronald L. Reisinger d/b/a R. L. Reisinger Company. The Respondent points to Bernadine Reisinger's testimony that the sole proprietorship debts were not paid out of the new corporation. However, this testimony is qualified by Bernadine Reisinger's answer of "Yes" to the following question: "Now, regarding bills, Mr. Reisinger had accumulated some debt when he was a sole proprietorship and that was eventually paid out of your savings account, correct?" She also stated that she and her husband had separate savings accounts and that she did not recall which savings account she used to pay the sole proprietorship debts. Further, when Ronald Reisinger was asked who paid the debts of the sole proprietorship, he answered: "The new corporation paid the debts." Considering the testimony of Bernadine and Ronald Reisinger, we find that the record as a whole supports the judge's determination that the Respondent paid the debts of the sole proprietorship.

quire the Respondent to make whole those individuals who were on the Charging Party's "out of work" list, and who were not referred to the Respondent due to the Respondent's refusal to adhere to the hiring hall provisions of the collective-bargaining agreement. We agree that the violation found in this proceeding warrants the inclusion of such individuals in the make-whole remedy. Accordingly, if there are employees, commencing with the 10(b) period, who were denied an opportunity to work for the Respondent because of the Respondent's refusal to abide by its collective-bargaining agreement with the Union, the Respondent will be ordered to make them whole, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and *Merryweather Optical Co.*, 240 NLRB 1213 (1979). A determination of whether such employees exist is best left to the compliance stage of this proceeding. See, e.g., *Yeager Distributing*, 261 NLRB 847, 849 fn. 10 (1982).

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, R. L. Reisinger Co., Inc., Westerville, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

*Mark G. Mehas, Esq.*, for the General Counsel.  
*Roger L. Sabo, Esq.*, of Columbus, Ohio, for the Respondent.  
*Mark D. Tucker, Esq.*, of Columbus, Ohio, for the Charging Party.

**DECISION**

**STATEMENT OF THE CASE**

RICHARD H. BEDDOW, JR., Administrative Law Judge. This matter was heard in Columbus, Ohio, on February 18, 1993. Subsequent to a requested extension in the filing date, briefs were filed by the General Counsel and the Respondent. The proceeding is based on a charge filed July 2, 1992,<sup>1</sup> by International Brotherhood of Electrical Workers, Local Union No. 683, AFL-CIO. The Regional Director's complaint dated September 18, 1992, as amended, alleges that the Respondent, R. L. Reisinger Co., Inc., of Westerville, Ohio, is a disguised continuance of Ronald L. Reisinger d/b/a R. L. Reisinger Company, a sole proprietorship, and that it violated Section 8(a)(1) and (3) of the National Labor Relations Act by failing and refusing to adhere to a contractors' association agreement with the Union and by attempting to repudiate its alleged collective-bargaining relationship with the Union.

On a review of the entire record in this case and from my observation of the witnesses and their demeanor, I make the following

<sup>1</sup> All following dates will be in 1992, unless otherwise indicated.

## FINDINGS OF FACT

## I. JURISDICTION

Respondent is a corporation engaged as an electrical contractor and as a certified female business enterprise with the city of Columbus. It annually purchases and receives goods from points outside Ohio and it admits that at all times material it has been an employer engaged in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act. It also admits that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. THE ALLEGED UNFAIR LABOR PRACTICES

In 1979, R. L. Reisinger Co. was operating as a sole proprietorship owned by Ronald Reisinger and was engaged in the business of electrical contracting. On November 29, 1979, Reisinger signed a letter of assent authorizing the Central Ohio Chapter, National Electrical Contractors Association, Inc. (NECA) to be its collective-bargaining agent. Reisinger also agreed to be bound by the terms of the existing collective-bargaining agreement which was in effect from June 1, 1979, to May 31, 1982. The agreement's automatic renewal clause states: "[The Agreement] shall continue in effect from year to year thereafter, from June 1, through May 31 of each year, unless changed or terminated in the way later provided herein." Any party who desired to terminate that agreement had to notify the other, in writing, on or before January 31, 1982. Thereafter, the NECA entered into three other collective-bargaining agreements with the Union. The most recently expired collective-bargaining agreement was in effect from June 1, 1989, to May 31, 1992. (This was renewed by NECA and the Union and the latest agreement is in effect until May 31, 1993.) The agreement provides that signatory employees are to hire from the Union's exclusive hiring hall. The automatic renewal language remains unchanged.

On January 2, 1981, R. L. Reisinger incorporated and officially became known as R. L. Reisinger Co., Inc. It also became designated by the city of Columbus as a "Female Business Enterprise." Bernadine Reisinger, Ronald's wife, became the majority stockholder and the vice president/secretary. Ronald Reisinger owns 49 percent of the Company and has always run its day-to-day operations. On February 3, 1981, Bernadine Reisinger informed the Union of the change in the name of the Company but the letter to the Union did not state that it was voiding the collective-bargaining agreement or its authorization to NECA to be its collective-bargaining agent nor did it indicate that the business was not a continuance of the sole proprietorship.

Until December 1981, the Respondent used the Union's hiring hall to employ electricians. In 1980 and 1981, Bernadine Reisinger signed the "Payroll Report for Electrical Contractors" which must be submitted by signatory employers to the collective-bargaining agreement for purposes of recording pension contributions. Bernadine Reisinger continued to submit these reports to the Union as required by the collective-bargaining agreement until February 1988. The reports from January 1982 to February 1988 indicate that "no" employees worked for the Respondent.

On March 25, 1988, Union Business Manager Timothy J. Lucas filled out a "stop card" (entitled Removal Notice To

Employees Benefit Board), on behalf of R. L. Reisinger Co. Lucas explained that a stop card is filled out if an electrical contractor is only working at a certain site, and the job ends, and he has no other layoffs, and does not anticipate having people to be reemployed with him for a certain length of time, and he asks the Union to send a stop card in the National Electrical Contractors' office so the employer does not have to continue filling out the the monthly reports required under the contract. It is a way for the employer not to have to fill out monthly reports listing fringe benefits, etc., taken out for its employees when it has no employees so it can avoid the inconvenience of sending in monthly reports which simply state that it has no employees and he said that cards are filled out at the request of the employer.

Lucas asserts that he had no knowledge that Reisinger had any employees after March 25, 1988, until on March 4, 1992, when Lucas was told that by an official from the city of Columbus, Ohio's prevailing wage office that Respondent had a job at City Center Mall at a store called I. B. Diffusion and at a store called Claire's Boutique and that there were people working on the job. Lucas thereafter visited the site, spoke with two of Respondent's employees (who were working as electricians and who had not been referred to the job by the Union and no fringes or other deductions were remitted to the Union on their behalf), and thereafter filed a grievance and the charge in this proceeding.

On June 1, 1992, Bernadine Reisinger wrote Business Manager Joe Hoover (who is also the Union's financial secretary) in response to the grievance and asserted that as she had not signed any agreements with the Union after she had informed them in 1981 that the Company had been incorporated under her ownership and control, the Company was not in violation of any agreement.

Ron Reisinger also testified that in 1987 Business Representatives Tim Lucas and Joe Hoover came by the Muirfield project he was working on and talked to him about the project, asked how things were going, and also asked about his son-in-law and mentioned the job he (Lucas) knew "we'd" done on Main Street prior to that time.

Reisinger also spoke briefly with Union Business Agent Ken Brotherton on a project in Gahanna, Ohio, in November 1988, when Brotherton drove by and asked him who was doing the job. Reisinger said "he" was. Although employee Rob VanMeter was also on the job at some undisclosed point, there is nothing to indicate Brotherton was made aware of that fact.

Otherwise, the record shows that over the years the Union had acquiesced in allowing Reisinger to "work with the tools" on jobs without question.

The record also shows that on one occasion in 1982, Reisinger rehired employee Charlie French (a worker new to the hiring hall procedures) without going through the referral procedure after he had signed the out-of-work list. The Union asked French to come back to the hall. When French quit to do so, the union business agent suggested that it would be alright for Reisinger to "work with the tools" and finish the job himself. He did so and never again called the Union for any referrals. In his testimony, Reisinger began to give his current interpretation of that described occasion and characterized it as an indication that the Union therefore believed it did not have a contract with "us." However, no union representative made any such statement and the se-

quences of events failed to provide a reasonable or likely basis for Reisinger to reach such a conclusion, and such a conclusion otherwise is inconsistent with the Respondent's continuation of filing contractor's payroll reports to the Union until March 1988.

### III. DISCUSSION

On brief, the Respondent contends that the charge was untimely under Section 10(b) of the Act and that there is no currently effective bargaining agreement. At first glance, with special reference to the number of years that have passed, it might appear that Respondent's various arguments in support of its contentions might have some equitable support. The record, however, shows that neither Ron Reisinger himself nor the Respondent Company ever made a timely repudiation of the 8(f) agreement he signed in 1979, which agreement contained an automatic renewal provision.

The record also provides ample support for a finding that Respondent Reisinger Co., Inc. is a disguised continuance of Ron Reisinger's sole proprietorship. Other than the incorporation and granting a 51-percent interest in the corporation to wife Bernadine Reisinger, R. L. Reisinger Co., Inc. remained the same entity as the sole proprietorship and the change to an incorporated status was clearly motivated principally by the desire to obtain business by qualifying as a "minority female enterprise."

After the date that Respondent was incorporated in 1981, the Company retained that same office at the same address and the Company paid debts or financial obligations accrued by the sole proprietorship and continued to use the same station wagon that Ron Reisinger had used when he was the sole proprietor until the corporation subsequently purchased a van. After incorporation, Respondent used the same wholesale suppliers to obtain its supplies. Both before and after incorporation, Ron Reisinger prepared estimates to bid on jobs, did electrical work in this field, and held the electrical license necessary to get Columbus job permits in his own name, while Bernadine Reisinger took over banking, bookkeeping, and office work. Ron Reisinger retained a 49-percent ownership interest and official company positions as both vice president and secretary and I find that under these circumstances the Respondent Company is bound under the National Labor Relations Act to the labor obligations entered into by the predecessor sole proprietorship.

Here, it is clear the involved 8(f) construction industry contract continued to automatically renew itself during those periods when Respondent had, at most, a "one man unit" because Respondent failed to repudiate the 8(f) agreement during any of those periods of time. See *Stack Electric*, 290 NLRB 575, 577-578 (1988). As a consequence, Respondent is bound to the current NECA agreement and it violated Section 8(a)(1) and (5) by failing to abide by the contract and by attempting an untimely repudiation of its collective-bargaining relationship with the Union by its letter of June 1, 1992.

The Board's policies and practices in matters of this nature are described in detail in the administrative law judge's decision affirmed and adopted by the Board in *Neosho Construction Co.*, 305 NLRB 100 (1991), and I find that the rationale expressed therein controls all pertinent aspects of the instant case.

In particular, it is noted that the *Neosho* case involved a 14-year period of automatic renewal during an inactive relationship and it is clear that the agreement did not expire merely due to the passage of time and thus, the Union's current agreement with the Association is valid and enforceable.

At the present time, Respondent has at least two employees so it cannot repudiate the contract, its current relationship with the Union, and its obligation to satisfy provisions relative to the use of the hiring hall and the making of benefit fund contributions.

I also find that the Union took no action, as alleged by Reisinger, that would indicate that it had repudiated the contract when, in 1982, it "recalled" an employee who had improperly returned to work at the Respondent while still on the hiring hall's out-of-work list. In the same vein, I find that the Union's explained prior conduct in not contesting Reisinger's personal work with the tools as an electrician does not bar it from enforcing other aspects of the agreement.

While the Respondent also attempts to assert that the Union had knowledge of the Company's noncompliance with the agreement in both 1987 and 1988, well prior to the 6-month 10(b) period, the speculative shreds of information that the Union allegedly obtained by speaking to Reisinger in 1987 about a job "we'd" done (this could refer to Ron Reisinger as the Company rather than to a plural number of persons), asking him in 1988 who was doing job (to which he answered "he was," an ambiguous reply which could mean the Company or himself individually), about prior alleged noncompliance conduct by Respondent, were not sufficiently "bald" or notorious to put the Union on notice that Reisinger intended to repudiate the 1979 stipulation agreement. And, in fact, Respondent submitted payroll reports until February 1988, after the 1987 incident, which action is inconsistent with any prior repudiation and, in March 1988, it was given a "stop card" which thereafter waived the filing of reports while the Company had no employees. Accordingly, I find no notice of noncompliance to the Union, in 1987 or 1988, see the *Neosho* case, supra, and I find that the Union did not gain sufficient notice of Respondent's repudiation by conduct until it was alerted to that possibility by the Columbus prevailing wage office on March 4, 1992, a date within the 10(b) period.

Under all these circumstances I find that the General Counsel has shown that the current NECA agreement is valid and enforceable, and that the Employer is obligated to abide by the hiring hall and benefit provisions of the contract, and that Respondent violated Section 8(a)(1) and (5) by failing to abide by the terms of this agreement and by repudiating its collective-bargaining relationship with the Union, as alleged.

### CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and it is in the position of a so-called "disguised continuance" of Ronald L. Reisinger d/b/a R. L. Reisinger Company, a sole proprietorship.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By failing and refusing to adhere to the provisions effective under a collective-bargaining agreement regarding

hiring hall and benefit fund obligations and by attempting to repudiate its agreement with the Union, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

#### REMEDY

Having found that Respondent has engaged in certain unfair labor practices, the recommended Order requires Respondent to cease and desist therefrom and to take the following affirmative action designed to effectuate the policies of the Act.

Respondent will be ordered to make whole unit employees, as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), for any losses they may have suffered as a result of Respondent's failure to apply the current collective bargaining to which it is bound by virtue of its contract stipulation with the Union, commencing with the 10(b) period, including contributions and payments the Union's contractual trust funds would have received, with interest computed in the manner prescribed by *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and *Merryweather Optical Co.*, 240 NLRB 1213 (1979). Finally, Respondent will be required to post the notice to employees attached as the appendix at any jobsite currently in progress within the geographical jurisdiction of the applicable agreement and at its place of business in Westerville, Ohio.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>2</sup>

#### ORDER

The Respondent, R. L. Reisinger Co., Inc., Westerville, Ohio, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Repudiating its automatically renewed collective-bargaining agreement with International Brotherhood of Electrical Workers, Local Union No. 683, AFL-CIO (except as provided in that agreement), and failing and refusing to recognize and abide by the terms of the agreement.

(b) Refusing to bargain with the Union by failing and refusing to adhere to contractual hiring hall procedures and failing and refusing to make contractually required reports and monetary payments relative to benefit funds that are mandatory subjects of bargaining.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

##### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Pay all delinquent pension fund payments or other fund payments that are mandatory subjects of bargaining, as required by the parties' relevant collective-bargaining agreements.

(b) In the manner set forth in the remedy section of this decision, make unit employees whole for any losses resulting from the Respondent's failure to adhere to the automatically

renewed relevant collective-bargaining agreements, including reimbursing them for any loss of wages and benefits.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports and all other records necessary to analyze the amount of backpay and other payments due under the terms of this Order.

(d) Post at its current jobsites within the geographical area encompassed by the appropriate unit and at its place of business in Westerville, Ohio, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

##### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT repudiate our automatically renewed collective-bargaining agreement with International Brotherhood of Electrical Workers, Local Union No. 683, AFL-CIO by failing and refusing to adhere to contractual hiring hall procedures and failing and refusing to make contractually required reports and payments to relative fringe benefit funds.

WE WILL NOT attempt to repudiate the agreement other than in accordance with its provisions.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL pay all delinquent benefit and pension fund payments as required by the automatically renewed collective-

<sup>2</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

bargaining agreement and will hire and recall employees under the agreement's hiring hall procedures.

WE WILL make unit employees whole for our failure to honor our agreement with the Union, including contributions

or payments to which the Union and the contractual trust funds are entitled under the agreement, with interest.

R. L. REISINGER CO., INC.